

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

Crl. W.P. No.10 of 2006

Date of decision: March 14, 2007.

Randhir Singh & Anr.

...Petitioner(s)

v.

State of Punjab & Ors.

...Respondent(s)

CORAM:

HON'BLE MR. JUSTICE SURYA KANT

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest.

Present: Shri H.S. Kamboj, Advocate for the petitioners.

Shri B.S. Baath, Assistant Advocate General, Punjab
for the respondents.

ORDER

This order shall dispose of Crl. W.P. Nos.10 of 2006 and Crl. Writ Petition Nos.1084 of 2006, 12, 13, 14, 15, 16, 18, 19, 21, 22, 51, 63, 64, 65, 66 and 160 of 2007 and Crl. Misc. Nos.74975-M, 75275-M, 75650-M, 76378-M, 76382-M, 77516-M, 78784-M, 79152-M, 79584-M, 79727-M, 79738-M, 79883-M, 80152-M, 80494-M, 81069-M and 81440-M of 2006 and 1800-M, 1844-M, 2009-M of 2007 and Crl.W.P. Nos.17 and 20 of 2007. Since common questions of law and facts are involved, for the sake of brevity, the facts are being taken from Crl. W.P. No.10 of 2006.

[2]. The petitioners (Randhir Singh @ Dhira and Jagtar Singh @ Tari) were convicted under Section 18 of the NDPS Act by the learned Special Judge, Sangrur vide judgment and order dated 9.12.1991 and were sentenced to undergo RI for 10 years each and fine of Rs.1 lac each, in default whereof they were to undergo further RI for one year each. The

petitioners preferred Crl. Appeal No.1062-SB of 2000 and Crl. Appeal No.1083-SB of 2000, respectively, against their above stated conviction and sentence which were admitted and are stated to be pending in this court. The petitioners sought their release on bail, however, the same was declined to them. Resultantly, the petitioners have actually undergone a substantial part of the total sentence awarded to them.

[3]. At the time when this writ petition was filed in the year 2006, it was the case of the petitioners that out of the total sentence of 10 years RI, they have already undergone about 6 years of substantial sentence including the period of detention pending trial.

[4]. The petitioners further aver that in exercise of his power under Article 161 of the Constitution of India, the Governor of Punjab has granted remissions from time to time (at least on five occasions) of one year each to all the convicts who were confined in various jails of the State of Punjab and were convicted by the courts of competent jurisdiction located in the State of Punjab. Copies of the notifications-cum-circulars issued to this effect from time to time have been appended as Annexures P-1, P-2, P-3 and P-4.

[5]. The contention of the petitioners is that if the remissions granted vide the above stated notifications-cum-circulars are added to the total period of actual sentence already undergone, they have already completed the entire period of sentence awarded to them and, thus, they are entitled to be released. According to the petitioners, by denying the benefit of these remissions to them, they are illegally detained by the respondents, therefore, this court should issue a writ in the nature of habeas corpus thereby commanding the respondents to release the petitioners forthwith. It is also contended that if the petitioners would actually undergo the total sentence period, the scope of relief in their pending appeals would also be limited to the extent of earning of exoneration only.

[6]. The respondents, however, have opposed the petitioners' claim on the ground that in view of statutory embargo created by Section 32-A of the NDPS Act, the petitioners and/or other convicts under the NDPS Act are not entitled to any remission. It is also contended by Learned State Counsel that the remedy, if at all, available to the petitioners is to seek suspension of

their sentence in the light of the guidelines laid down by the Division Bench of this Court in the case of **Daler Singh v. State of Punjab**, 2007(1) RCR (Crl.) 316.

[7]. Learned Counsel for the parties, however, are in agreement that a learned Single Judge of this Court in Criminal Writ Petition No.839 of 2004 (**Ekka Ram v. State of Punjab etc.**) has held that the powers of the Governor of the State under Article 161 of the Constitution of India cannot be whittled down by a statutory provision like Section 32-A of the NDPS Act. The writ petitioner in that case, i.e. a convict under the NDPS Act, was accordingly held entitled to get benefits of the remissions granted by the notifications-cum-circulars issued from time to time under Article 161 of the Constitution.

[8]. It is also not in dispute amongst Learned Counsel for the parties that the State of Punjab has preferred SLP (Crl.) No.2496 of 2006 in the Hon'ble Supreme Court against the above stated judgment of this Court and the same is still pending.

[9]. Normally, when the legality of the order passed by this Court is *sub judice* before the Hon'ble Supreme Court, it would have been appropriate to adjourn these cases to await the final outcome of the pending Special Leave Petition.

[10]. However, Learned Counsel for the parties have urged and rightly so, that there is an urgency in these cases inasmuch as the petitioners have already undergone substantial part of the total sentence awarded to them and if these matters are not taken up at the earliest, most of them will complete the entire period of sentence, thereby rendering these petitions infructuous. That apart, the Criminal Appeals preferred by the petitioners against their conviction and sentence would also, in a way, be rendered infructuous, except the issue of their exoneration on merits.

[11]. The workable solution for the interregnum has been effectively devised by another Learned Single Judge of this Court vide order dated November 8, 2006 passed in Crl. W.P. No.768 of 2005 (**Ajaib Singh s/o Jit Singh v. State of Punjab & Ors.**) wherein the petitioner, who was a similarly situated convict under the NDPS Act, was ordered to be temporarily released subject to his fulfilling the following terms and

conditions:-

- “(1) Before releasing the petitioner, the concerned Superintendent of Jail will verify the period undergone by the convict and the remissions granted under Article 161 of the Constitution of India and that if after subtracting the period on parole, the convict has undergone the sentence awarded by the court, he shall be released temporarily on bail to the satisfaction of the Chief Judicial Magistrate during the pendency of the Special Leave Petition filed by the State of Punjab in the case of Ekka Ram (SLP (Crl.) No.2496 of 2006) arising from the final judgment and order dated 14.9.2005 passed in Crl. W.P. No.839 of 2004. The convict concerned will be granted the benefit of remission as per the circulars issued by the Government of Punjab under Article 161, after his conviction.
- (2) The petitioner will remain on bail during the pendency of SLP No.2496 of 2006 in Hon'ble Supreme Court. If as per the judgment of the Supreme Court, benefit of remissions under Article 161 is not granted, the convict will surrender back in jail for undergoing the unexpired period of sentence.
- (3) At the time of release on bail, the petitioner will give an undertaking that he will not leave the country without prior permission of the Court and will keep peace and will continue informing the Chief Judicial Magistrate concerned his residential address from time to time.”

[12]. Following the order dated November 8, 2006 passed by this Court, the operative part of which has been reproduced above, these petitions are also disposed of with a direction that the cases of the petitioners for their temporary release be considered and if they fulfill all the terms and conditions laid down by this Court in the order dated November 8, 2006, they be also temporarily released on bail on the same terms and conditions. The entire exercise shall be done by the concerned Superintendents of Jails as early as possible but not later than one month from today.

[13]. The above made directions of interim nature, however, are further subject to the final outcome of the Criminal Appeals which the petitioners have preferred against their conviction and sentence and are stated to be pending adjudication before this Court.

[14]. Disposed of.

March 14, 2007.
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[**Surya Kant**]
Judge